

DECISION

Spring

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE:

B-215705

DATE: December 3, 1984**MATTER OF:**

Beaver Linoleum & Tile Co., Inc.

DIGEST:

GSA acted unreasonably in failing to refer to SBA for certificate of competency its rejection of small business low bidder, who submitted a bid responsive on its face, but which GSA erroneously rejected as nonresponsive, because GSA did not believe bidder would comply with specification--a matter of bidder responsibility, not responsiveness. However, termination of contract is not recommended because it has been substantially performed.

Beaver Linoleum & Tile Co., Inc. (Beaver), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. GS-03-84-B-0046, a small business set-aside, issued by the General Services Administration (GSA), Philadelphia, Pennsylvania, for the installation of carpet tile at a federal building in Philadelphia.

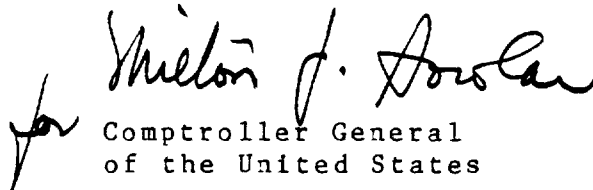
Beaver was the low bidder on the IFB. Shortly after bid opening, some carpet manufacturers informed GSA that Beaver was not going to provide carpet tile that was "fusion bonded." Subparagraph 5.1.1 of section 09690 of the specification requires carpet tile to be of "fusion bonded construction." GSA then met with Beaver and a representative of the manufacturer of the carpet tile which Beaver was going to use to perform this contract to discuss this alleged noncompliance. Beaver indicated then and continues to assert that this carpet tile is "fusion bonded." GSA disagrees. Based upon its technical review, GSA rejected Beaver as "nonresponsive" and awarded the contract to the second low bidder. Since Beaver's bid, on its face, took no exception to the IFB requirements, its bid clearly was responsive. 49 Comp. Gen. 553, 556 (1970); International Alliance of Sports Officials, B-211831, Mar. 6, 1984, 84-1 C.P.D. ¶ 271. GSA effectively found that Beaver was not a

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responsible contractor because GSA believed that the bidder intended to perform the contract in a manner inconsistent with the specifications. Federal Aviation Administration, Request for Advance Decision, B-185071, Dec. 10, 1975, 75-2 C.P.D. ¶ 387.

Beaver is a small business. The Small Business Act, as amended, provides that a small business may not be precluded from an award on the basis of a nonresponsibility determination without referral of the matter to the Small Business Administration (SBA) for final disposition under certificate of competency procedures. See Small Business Act, 15 U.S.C. 77(b)(7) (1982). Consequently, GSA's rejection of Beaver's bid effectively on the basis of nonresponsibility without referral to the SBA is unreasonable and tantamount to arbitrary and capricious action. Environmental Growth Chambers, B-201333, Oct. 8, 1981, 81-2 C.P.D. ¶ 286.

Beaver's protest therefore is sustained. However, GSA has indicated that notice to proceed on this contract was issued on July 25, 1984, and that the work is to be completed by November 22, 1984. Consequently, we do not believe termination of this substantially completed contract would be in the government's best interest.


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